

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
<b>vs.</b>	)	<b>CRIMINAL ACTION 08-00204-KD-N</b>
	)	
<b>DANIEL STUART ADDISON,</b>	)	
	)	
<b>Defendant.</b>	)	

**ORDER**

This matter is before the Court on the Report and Recommendation of U.S. Magistrate Judge Katherine P. Nelson and defendant's objection entitled "Motion to Reinstate Defendant's § 2255 motion" (docs. 70, 76). Judge Nelson recommends that the United States' motion to dismiss be granted and defendant's motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence be dismissed without prejudice as premature because the motion was filed while defendant's appeal was pending. Judge Nelson points out that the mandate affirming defendant's conviction issued a few days before entry of the report and recommendation but certain time periods remained available to defendant for further appeal of that decision. However, in response, defendant moves the court to reinstate his § 2255 motion and asserts that the Magistrate Judge should strike the recommendation.

Upon consideration, and all time periods for further appeal having passed, the motion to reinstate is **GRANTED** and defendant's motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence by a person in federal custody (doc. 65) and memorandum in support (doc. 66) are hereby referred to the Magistrate Judge for appropriate disposition. Accordingly, the report and recommendation that defendant's motion be denied as premature with leave to re-file (doc. 70) is now **MOOT**.

**DONE** and **ORDERED** this the 21st day of January, 2010.

s / Kristi K. DuBose  
**KRISTI K. DuBOSE**  
**UNITED STATES DISTRICT JUDGE**